

### **Remarks**

Claims 1 to 22 are pending in this application. All the pending claims stand rejected. By this response, claims 1, 11, 16, 19 and 20 have been amended and claims 3, 15, and 18 have been canceled. Applicants respectfully request reconsideration of the rejected claims in light of the amendments and the following remarks.

### **Claim Amendment**

The independent claims have been amended to clarify that the polymeric film is multilayered, comprised of an elastomer, and is characterized by resealability. Support for these changes is found, for example, on page 2, lines 23-31, of the present specification. No new matter is added by the amendment.

### **Claim Objections**

Claim 19 was objected to for failing to end with a period. Claims 17 and 18 were objected to for being duplicative of claims 14 and 15. Claims 17 and 19 have been amended to correct these informalities. Claim 18 has been canceled. These objections may now be withdrawn.

### **§ 102 Rejections**

Claims 1-5, 9, 10, 11 and 14-21 stand rejected under 35 USC § 102(e) as being anticipated by Palaeri et al. (6,100,570). Claims 11, 2, 3, 20 and 21 stand rejected under 35 USC § 102(b) as being anticipated by CPChem, polyethylene data sheet. Claims 1, 2, 3, 20 and 21 stand rejected under 35 USC § 102(b) as being anticipated by ASTM D1709-03. Claims 1-19 stand rejected under 35 USC § 102(b) as being anticipated by Brew et al. (U.S. Patent No. 5,667,902). Claims 1-4, 7, 8-15, 17, 18-21 stand rejected under 35 USC § 102(b) as being anticipated Hall et al. (AU-8425267). Applicants respectfully traverse these rejections as applied to the amended version of the claims.

A patent claim is anticipated only if each and every element as set forth in the claim is found in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). The present claims have been amended to clarify that the polymeric film is multilayered and comprises an elastomer. The amended claims further indicate that the films have a targeted level of resealability. With the exception of Hall et al., none of the above-identified references cited by the Examiner teach the use of an elastomer. The Examiner has taken the position that “all materials have some degree of elastic properties and thus meet the limitations of the claims.” (Office Action, p. 4). However, the mere fact that a material may have some elastic properties does not mean that it is an elastomer or is “elastomeric.” ASTM D883 defines an elastomer as “a macromolecular material that at room temperature returns rapidly to approximately its initial dimension and shape after a substantial deformation by a weak stress and release of the stress.” It is generally accepted in the art that “substantial deformation” means being stretched to approximately twice its initial length (Plastic Materials Handbook). Although the materials identified in the above references may have some degree of elastic properties in that they may be capable of being deformed, there is nothing in these references to indicate that they are true elastomers (with the exception of Hall et al.) and thus can return to their original shape after substantial stretching.

In addition, none of the references that the Examiner has cited in support of a rejection under § 102 describe a film having the property or resealability as defined in the present specification, or how to obtain it. At most, some of the materials are described as being puncture resistant, but nothing in these references discloses a film having the ability to reduce the size of a hole in the film at a puncture site or even completely closing the puncture site.

Although Hall et al. describes three layer laminates having a self-healing core layer of an elastomeric adhesive, these films are not “resealable” as that term is defined in the

present specification. When the Hall films are punctured, the inner adhesive core flows into the puncture hole and fills it up. The hole itself is not actually reduced in size, rather it is plugged up with an adhesive. In contrast, when the films of the present invention are punctured and the puncturing object is removed, the hole closes itself up as opposed to being filled up by an adhesive. This property is reflected in the definition of resealability provided on page 4, lines 12-17 of the specification. The Hall films do not fit under this definition of resealable.

Since none of the above references disclose all of the elements of the pending claims, applicants respectfully submit that the § 102 rejections have been overcome and should be withdrawn.

### **§ 103 Rejections**

Claims 1-19 stand rejected under 35 USC § 103(a) as being unpatentable over Cheung et al. (U.S. Patent No. 6,376,095) in view of Brew et al. (U.S. Patent No. 5,667,902). Claims 20-22 stand rejected under 35 USC § 103(a) as being unpatentable over CPChem, polyethylene data sheet in view of ASTM D1709-03. Applicants respectfully traverse these rejections as applied to the amended version of the claims.

In order to establish a *prima facie* case of obviousness, the Patent Office must demonstrate that (1) there is a suggestion or motivation in the prior art to modify or combine reference teachings, (2) one skilled in the art would have had a reasonable expectation of success in making the modification or combination, and (3) the prior art reference(s) disclose all of the claim limitations. The fact that one of ordinary skill in the art would have had the capability to modify the method disclosed in the prior art reference(s) is not sufficient. MPEP 2143.01. The prior art reference(s) must provide a motivation or reason for making the changes. MPEP 2142; *Ex parte Chicago Rawhide Manufacturing Co.*, 226 USPQ 438 (PTO Bd. App. 1984).

Cheung et al. describes elastic films having at least one layer comprising a substantially random interpolymer or a blend thereof. The other layers generally are constructed of a material that is compatible with the random interpolymer layer. In particular, polymers such as LDPE, LLDPE, ULDPE, EVA, and EAA are used to form the additional layers. In col. 20, lines 56-65, Cheung et al. list the desirable properties of the plastic films, including puncture resistance, tensile strength, low modulus, tear resistance, shrinkability, and high clarity. However, Cheung et al. do not teach or suggest the films having resealability or how such a property can be achieved. Thus, Cheunge et al. do not provide all of the claim limitations.

With respect to Brew et al., CPCChem., and ASTM D1709, as Applicants have already discussed above, these references also do not disclose the property of resealability and thus suffer from the same deficiencies as Cheung. Consequently, even in combination these references do not teach or suggest all of the claim limitations.

For the above reasons, Applicants respectfully submit that the § 103 rejections have been overcome and should be withdrawn.

### **Conclusion**

In view of the foregoing amendments and remarks, Applicants respectfully submit that the application is in condition for allowance. Reconsideration of the application is requested.

A Request for Extension Of Time Under 37 CFR § 1.136(a) and authorization to charge the extension of time fee to Assignee's deposit account is included with this Amendment.

All communications in this case should be direct to the undersigned. If the Examiner believes a telephone discussion would be helpful to resolve any of the outstanding issue in this case, the Examiner is encouraged to call the undersigned at the number listed below.

Respectfully submitted,

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By: Sean J. Edman

Sean J. Edman, Reg. No.: 42,506

Telephone No.: (651) 575-1796

Office of Intellectual Property Counsel  
3M Innovative Properties Company  
Facsimile No.: 651-736-3833